

**ASSEMBLY BILL**

**No. 815**

**Introduced by Assembly Member Lieber  
(Coauthor: Assembly Member Chan)**

February 18, 2005

---

An act to amend Sections 142.3, 144.6, 147, 147.1, and 147.2 of the Labor Code, relating to occupational safety and health.

LEGISLATIVE COUNSEL'S DIGEST

AB 815, as introduced, Lieber. Occupational safety and health.

Existing law authorizes the Occupational Safety and Health Standards Board to be the only agency in the state to adopt, amend, or repeal occupational safety and health standards, and requires the board to adopt standards that are at least as effective as federal standards promulgated under the Occupational Safety and Health Act of 1970, within a specified time. Existing law also requires the board to adopt the standard that most adequately assures that no employee will suffer material impairment of health or functional capacity even if the employee has regular exposure to a hazard regulated by that standard for the period of his or her working life.

Existing law requires the Department of Industrial Relations and the State Department of Health Services to establish a repository of current data on toxic materials and harmful agents in use or potentially in use in places of employment in the state. That law requires the repository to fulfill certain functions, including providing reliable information and collecting and evaluating data and information related to toxic materials or harmful physical agents, and recommending to the Chief of the Division of Occupational Safety and Health that an occupational safety and health standard be developed when it has been determined that a substance in use or potentially in use in places of

employment is potentially toxic at the concentrations or under the conditions used.

This bill would require the board to adopt standards recommended and forwarded to the board by the repository by certain deadlines, and would require the board to defer to the scientific expertise of the repository, including any recommendation for a permissible exposure limit, unless new scientific evidence is made known to the repository that the repository's permissible exposure limit would not protect employees from material impairment of health or functional capacity, in which case the repository shall consider the new evidence and make further recommendations.

This bill would also require the repository, in addition to its existing functions, to prepare standards for any hazardous substances for which there is a quantitative risk assessment prepared or published by the Office of Environmental Health Hazard Assessment (OEHHA), which shall include a calculation of a permissible exposure limit based upon OEHHA data to protect against cancer or reproductive, developmental, or other chronic health effects. This bill would require the repository to recommend to the board revised or new standards to be adopted by specified deadlines if the repository makes certain findings related to permissible exposure limits. This bill would also require the repository to develop risk levels that it will use to derive air concentration levels for hazardous substances prior to, or in concert with, the development of any permissible exposure limit the repository recommends to the board.

This bill would also make other conforming and clarifying changes to existing law.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 142.3 of the Labor Code is amended to
- 2 read:
- 3 142.3. (a) (1) The board, by an affirmative vote of at least
- 4 four members, may adopt, amend, or repeal occupational safety
- 5 and health standards and orders. The board shall be the only
- 6 agency in the state authorized to adopt occupational safety and
- 7 health standards.

(2) *The board shall adopt standards forwarded to it by the repository pursuant to paragraph (5) of subdivision (b) of Section 147.2. These standards shall conform to the recommendation of the repository. The board shall defer to the scientific expertise of the repository, including any recommendation for a permissible exposure limit, as set forth in Section 144.6. The board shall adopt these standards by the following deadlines:*

(A) *By January 1, 2008, standards for hazardous substances for which there exists a permissible exposure limit pursuant to Title 8 of the California Code of Regulations.*

(B) *By January 1, 2009, standards for hazardous substances for which no permissible exposure limit pursuant to Title 8 of the California Code of Regulations exists, and that are listed as known to the state to cause cancer or reproductive toxicity under the Safe Drinking Water and Toxic Enforcement Act of 1986 (Chapter 6.6 (commencing with Section 25249.5) of Division 20 of the Health and Safety Code).*

(C) *Within one year of the date the repository makes its recommendation to the board for any other standard developed pursuant to paragraph (5) of subdivision (b) of Section 147.2.*

(3) The board shall adopt standards at least as effective as the federal standards for all issues for which federal standards have been promulgated under Section 6 of the Occupational Safety and Health Act of 1970 (~~P.L. 91-596~~) (29 U.S.C. Sec. 655) within six months of the promulgation date of the federal standards and ~~which that~~, when applicable to products—~~which that~~ are distributed or used in interstate commerce, are required by compelling local conditions and do not unduly burden interstate commerce.

~~(3)~~

(4) No standard or amendment to any standard adopted by the board that is substantially the same as a federal standard shall be subject to Article 5 (commencing with Section 11346) and Article 6 (commencing with Section 11349) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code. For purposes of this subdivision, “substantially the same” means identical to the federal standard with the exception of editorial and format differences needed to conform to other state laws and standards.

1     ~~(4)–~~

2     (5) If a federal standard is promulgated and no state standard  
3     that is at least as effective as the federal standard is adopted by  
4     the board within six months of the date of promulgation of the  
5     federal standard, the following provisions shall apply unless  
6     adoption of the state standard is imminent:

7     (A) If there is no existing state standard covering the same  
8     issues, the federal standard shall be deemed to be a standard  
9     adopted by the board and enforceable by the division pursuant to  
10    Section 6317. This standard shall not be subject to Article 5  
11    (commencing with Section 11346) and Article 6 (commencing  
12    with Section 11349) of Chapter 3.5 of Part 1 of Division 3 of  
13    Title 2 of the Government Code.

14    (B) If a state standard is in effect at the time a federal standard  
15    is promulgated covering the same issue or issues, the board may  
16    adopt the federal standard, or a portion thereof, as a standard  
17    enforceable by the division pursuant to Section 6317; provided,  
18    however, *that* if a federal standard or portion thereof is adopted  
19    ~~which~~ *that* replaces an existing state standard or portion thereof,  
20    the federal standard shall be as effective as the state standard or  
21    portion thereof. No adoption of or amendment to any federal  
22    standard, or portion thereof, shall be subject to Article 5  
23    (commencing with Section 11346) and Article 6 (commencing  
24    with Section 11349) of Chapter 3.5 of Part 1 of Division 3 of  
25    Title 2 of the Government Code.

26    (C) Any state standard adopted pursuant to subparagraph (A)  
27    or (B) shall become effective at the time the standard is filed with  
28    the Secretary of State, unless otherwise provided, but shall not  
29    take effect before the effective date of the equivalent federal  
30    standard~~and~~. *That state standard* shall remain in effect for six  
31    months unless readopted by the board for an additional six  
32    months or superseded by a standard adopted by the board  
33    pursuant to paragraph (2) of subdivision (a).

34    (D) Any standard adopted pursuant to subparagraph (A), (B),  
35    or (C), shall be published in Title 8 of the California Code of  
36    Regulations in a manner similar to any other standards adopted  
37    pursuant to paragraphs (1) and (2) of subdivision (a) of this  
38    section.

39    (b) The State Building Standards Commission shall codify and  
40    publish in a semiannual supplement to the California Building

Standards Code, or in a more frequent supplement if required by federal law, all occupational safety and health standards that would otherwise meet the definition of a building standard described in Section 18909 of the Health and Safety Code adopted by the board in the State Building Standards Code without reimbursement from the board. These occupational safety and health standards may also be published by the Occupational Safety and Health Standards Board in other provisions in Title 8 of the California Code of Regulations prior to publication in the California Building Standards Code if that other publication includes an appropriate identification of occupational safety and health standards contained in the other publication.

(c) Any occupational safety or health standard or order promulgated under this section shall prescribe the use of labels or other appropriate forms of warning as are necessary to ensure that employees are apprised of all hazards to which they are exposed, relevant symptoms and appropriate emergency treatment, and proper conditions and precautions for safe use or exposure. Where appropriate, these standards or orders shall also prescribe suitable protective equipment and control or technological procedures to be used in connection with these hazards and shall provide for monitoring or measuring employee exposure at such locations and intervals and in a manner as may be necessary for the protection of employees. In addition, where appropriate, the occupational safety or health standard or order shall prescribe the type and frequency of medical examinations or other tests ~~which~~ *that* shall be made available, by the employer or at his or her cost, to employees exposed to ~~such~~ *these* hazards ~~in order~~ to most effectively determine whether the health of ~~such~~ *each* employee is adversely affected by this exposure.

(d) The results of ~~these~~ *the* examinations or tests *required by subdivision (c)* shall be furnished only to the Division of Occupational Safety and Health, the State Department of Health Services, any other authorized state agency, the employer, the employee, and, at the request of the employee, to his or her physician.

SEC. 2. Section 144.6 of the Labor Code is amended to read:

144.6. (a) In promulgating standards dealing with toxic materials or harmful physical agents, the board shall adopt ~~that~~

~~the standard which that~~ most adequately assures, to the extent feasible, that no employee will suffer material impairment of health or functional capacity even if ~~such the~~ employee has regular exposure to a hazard regulated by ~~such that~~ standard for the period of his or her working life. Development of standards under this section shall be based upon research, demonstrations, experiments, and ~~such~~ other information, as ~~may be~~ appropriate.

~~In addition to~~

*(b) In adopting standards pursuant to subdivision (a), the board shall consider the attainment of the highest degree of health and safety protection for the employee, — other considerations shall be the latest available scientific data in the field, the reasonableness of the standards, and experience gained under this and other health and safety laws. Whenever*

*(c) The board shall defer to the scientific expertise of the repository, including any recommendation for a permissible exposure limit prepared pursuant to paragraph (5) of subdivision (b) of Section 147.2. If new scientific evidence is made known to the repository that the repository's permissible exposure limit would not protect employees from material impairment of health or functional capacity, then the repository shall consider the new evidence and make further recommendations.*

*(d) Whenever practicable, the standard promulgated shall be expressed in terms of objective criteria and of the performance desired.*

SEC. 3. Section 147 of the Labor Code is amended to read:

147. The board shall refer to the Division of Occupational Safety and Health for evaluation of any proposed occupational safety or health standard or variance from adopted standards received by the board from sources other than the division or the repository. The division shall submit a report on the proposed standard or variance within 60 days of receipt thereof.

SEC. 4. Section 147.1 of the Labor Code is amended to read:

147.1. In connection with the development and promulgation of occupational health standards, the Division of Occupational Safety and Health shall perform, *except with respect to standards developed pursuant to paragraph (3) or (5) of subdivision (b) of Section 147.2*, all of the following functions:

(a) Analyze proposed and new federal occupational health standards, evaluate their impact on California, determine any

1 necessity for their modification, and present *the* proposed  
2 standards to the board in sufficient time for the board to conduct  
3 hearings and adopt standards within the time required.

4 (b) Maintain liaison with the National Institute of  
5 Occupational Safety and Health and the federal Occupational  
6 Safety and Health Administration in the development of  
7 recommended federal standards and, when appropriate, provide  
8 representation on federal advisory committees dealing with the  
9 development of occupational health standards.

10 (c) On occupational health issues not covered by federal  
11 standards, maintain surveillance, determine the necessity for  
12 standards, *and* develop and present proposed standards to the  
13 board.

14 (d) Evaluate any proposed occupational health standard or  
15 application for a variance of an occupational health standard  
16 received by the board, and submit a report to the board on the  
17 proposed standard or variance within 60 days of receipt thereof.

18 (e) Appear and testify at board hearings and other public  
19 proceedings involving occupational health matters.

20 SEC. 5. Section 147.2 of the Labor Code is amended to read:

21 147.2. (a) In accordance with Chapter 2 (commencing with  
22 Section 6350) of Part 1 of Division 5 of this code and Section  
23 105175 of the Health and Safety Code, the Department of  
24 Industrial Relations shall, by interagency agreement with the  
25 State Department of Health Services, establish a repository of  
26 current data on toxic materials and harmful physical agents in use  
27 or potentially in use in places of employment in the state.

28 (b) The repository shall fulfill all of the following functions:

29 (1) Provide reliable information of practical use to employers,  
30 employees, representatives of employees, and other  
31 governmental agencies on the possible hazards to employees of  
32 exposure to toxic materials or harmful physical agents.

33 (2) Collect and evaluate toxicological and epidemiological  
34 data and any other information that may be pertinent to  
35 establishing harmful effects on health of exposure to toxic  
36 materials or harmful physical agents. Nothing in this subdivision  
37 shall be construed as authorizing the repository to require  
38 employers to report any information not otherwise required by  
39 law.

(3) Recommend to the Chief of the Division of Occupational Safety and Health ~~Administration~~ that an occupational safety and health standard be developed whenever it has been determined that a substance in use or potentially in use in places of employment is potentially toxic at the concentrations or under the conditions used.

(4) Notify the Director of Food and Agriculture of any information developed by the repository that is relevant to carrying out his or her responsibilities under ~~Chapters~~ Chapter 2 (commencing with Section 12751) and Chapter 3 (commencing with Section 14001) of Division 7 of the Food and Agricultural Code.

(5) *Prepare standards for any hazardous substances for which there is a quantitative risk assessment prepared or published by the Office of Environmental Health Hazard Assessment (OEHHA), within the California Environmental Protection Agency. Each standard shall include a calculation of a permissible exposure limit based upon the OEHHA data to protect against cancer or reproductive, developmental, or other chronic health effects.*

(A) *The repository shall recommend revised or new standards to the board for adoption if the repository finds either of the following:*

(i) *An existing permissible exposure limit is not as protective as the repository's calculation of the permissible exposure limit.*

(ii) *No permissible exposure limit exists for any workplace hazardous substance that is listed as known to the state to cause cancer or reproductive toxicity under the Safe Drinking Water and Toxic Enforcement Act of 1986 (Chapter 6.6 (commencing with Section 25249.5) of Division 20 of the Health and Safety Code) and for which the OEHHA has prepared or published a quantitative risk assessment.*

(B) *The repository shall forward its recommendations for revised or new standards to the board by the following deadlines:*

(i) *By January 1, 2007, revised standards for hazardous substances for which there exists a permissible exposure limit pursuant to Title 8 of the California Code of Regulations.*

(ii) *By January 1, 2008, new standards for hazardous substances for which no permissible exposure limit exists and*

1 *that are listed as known to the state to cause cancer or*  
 2 *reproductive toxicity under the Safe Drinking Water and Toxic*  
 3 *Enforcement Act of 1986 (Chapter 6.6 (commencing with Section*  
 4 *25249.5) of Division 20 of the Health and Safety Code).*

5 *(iii) All other standards based upon quantitative risk*  
 6 *assessments prepared or published by OEHHA or based upon*  
 7 *new scientific evidence shall be developed promptly to the extent*  
 8 *allowed by repository resources and forwarded to the board*  
 9 *immediately thereafter.*

10 *(6) The repository shall develop risk levels, which may from*  
 11 *time to time be modified, that will be used by the repository to*  
 12 *derive air concentration levels for hazardous substances prior to,*  
 13 *or in concert with, the development of any permissible exposure*  
 14 *limit that the repository recommends to the board pursuant to*  
 15 *subparagraph (A) of paragraph (5).*

16 *(c) The Director of Industrial Relations shall appoint an*  
 17 *Advisory Committee to the repository. The Advisory Committee*  
 18 *shall consist of four representatives from labor, four*  
 19 *representatives from management, four active practitioners in the*  
 20 *occupational health field, and three persons knowledgeable in*  
 21 *biomedical statistics or information storage and retrieval systems.*  
 22 *The Advisory Committee shall meet on a regular basis at the*  
 23 *request of the director. The committee shall advise and be*  
 24 *consulted by, and shall advise the director at each phase of the*  
 25 *structuring and functioning of the repository and alert system*  
 26 *with regard to; the procedures, methodology, validity, and*  
 27 *practical utility of collecting, evaluating, and disseminating*  
 28 *information concerning hazardous substances, consistent with the*  
 29 *primary goals and objectives of the repository.*

30 *(d) Nothing in this section shall be construed to limit the*  
 31 *ability of the State Department of Health Services to propose*  
 32 *occupational safety and health standards to the ~~Occupational~~*  
 33 *~~Safety and Health Standards Board~~ board.*

34 *(e) Policies and procedures shall be developed to assure, to the*  
 35 *extent possible, that the repository uses and does not duplicate*  
 36 *the resources of the federal government and other states.*

37 *(f) On or before December 31 of each year, the Department of*  
 38 *Industrial Relations shall submit a report to the Legislature*  
 39 *detailing the implementation and operation of the repository,*  
 40 *including, but not limited to, the amount and source of funds*

1 allocated and spent on repository activities, the toxic materials  
2 and harmful physical agents investigated during the past year and  
3 recommendations made concerning ~~them~~ *those toxic materials*  
4 *and harmful physical agents*, actions taken to inform interested  
5 persons of the possible hazards of exposure to toxic materials and  
6 harmful physical agents, and any recommendations for  
7 legislative changes relating to the functions of the repository.

O